

MARK J. BENNETT 2672  
Attorney General of Hawaii

J. GERARD LAM 5326  
Deputy Attorney General  
Department of Attorney  
General, State of Hawaii  
Labor Division  
425 Queen Street  
Honolulu, Hawaii 96813  
Telephone: 586-1450

04 DEC 15 A9:05

HAWAII  
LABOR RELATIONS BOARD

Attorneys for Director of Labor  
and Industrial Relations

## HAWAII LABOR RELATIONS BOARD

### STATE OF HAWAII

In the Matter of	) CASE NO. OSH 2004-9
	)
DIRECTOR, DEPARTMENT OF LABOR	) STIPULATION AND SETTLEMENT
AND INDUSTRIAL RELATIONS,	) AGREEMENT; EXHIBIT A; APPROVAL
	) AND ORDER
Complainant,	)
	)
vs.	)
	)
ISEMOTO CONTRACTING CO., LTD.,	)
	)
Respondent.	)

### STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations ("Director") and Respondent ISEMOTO CONTRACTING CO., LTD. ("Respondent"), having reached a full and complete settlement of the above-captioned contested case presently pending before the Labor and Industrial Relations Appeals Board ("Board") stipulate and agree as follows:

On or about March 2, 2004, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located at 69-289 Waikoloa Beach Drive, Kamuela, Hawaii 96743.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on July 23, 2004 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$12,000.00. *See* Exhibit A.

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").
2. At all relevant times, Respondent maintained a workplace at 69-289 Waikoloa Beach Drive, Kamuela, Hawaii 96743.
3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirement of HRS chapter 396, the Hawaii Occupational Safety and Health Law.
4. Respondent agrees that it has or will abate each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22. Respondent shall submit the completed abatement certification to HIOSH no later than ten (10) days after the date this Agreement is filed; failure to timely do so may result in additional penalties or follow up inspections.
5. The violations and corresponding characterizations as stated in the Citation are affirmed. *See* Exhibit A.
6. The Director reduces the aggregate penalty from \$12,000.00 to \$9,000.00, which shall be paid in full to the Director of Budget and Finance within ten (10) business days of the Board's approval of this Agreement.

7. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

8. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

9. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.


10. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

11. By entering into this Agreement, Respondent does not admit that it violated the cited standards for any litigation or purpose other than proceedings under the Hawaii Occupational Safety and Health Law.

DATED: Honolulu, Hawaii, December 15, 2004.

APPROVED AS TO FORM:

ISEMOTO CONTRACTING CO., LTD.



JEFFREY S. HARRIS, ESQ.

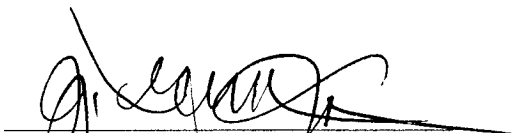
DANIEL G. MUELLER

Attorneys for Respondent

By:   
Its: PRESIDENT

APPROVED AS TO FORM:

DIRECTOR OF LABOR AND  
INDUSTRIAL RELATIONS

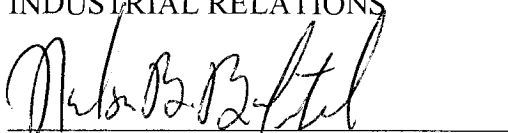


J. GERARD LAM

Deputy Attorney General

Attorney for Director of Labor and

Industrial Relations, State of Hawaii

  
NELSON B. BEFITEL

APPROVED AND SO ORDERED BY  
HAWAII LABOR RELATIONS BOARD:

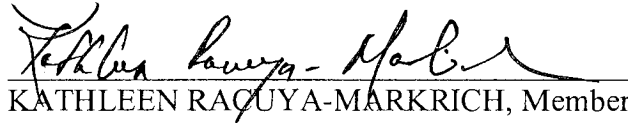
ORDER NO. 115



BRIAN K. NAKAMURA, Chair



CHESTER C. KUNITAKE, Member



KATHLEEN RAQUYA-MARKRICH, Member

---

In re: Director, Department of Labor and Industrial Relations vs. Isemoto Contracting Co., Ltd.,  
OSH 2004-9, Stipulation and Settlement Agreement, Exhibit "A"



**State of Hawaii**

Department of Labor and Industrial Relations  
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION  
830 PUNCHBOWL STREET, ROOM 425  
Honolulu, HI 96813  
Phone: (808) 586-9110 FAX: (808) 586-9104



Certified Number: 7003 3110 0003 5610 3007

---

## Citation and Notification of Penalty

---

**To:**

Isemoto Contracting Co Ltd  
and its successors  
P O Box 4669  
Hilo, HI 96720

**Inspection Number:** 307255224 Charles Clark

**Inspection Date(s):** 03/02/2004

**Issuance Date:** 07/23/2004

**OSHA ID:** X8851

**Optional Report No.:** 03904

**Inspection Site:**

69-289 Waikoloa Beach Dr  
Kamuela, HI 96743

*The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

---

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the law has occurred unless there is a failure to contest as provided for in the law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

**Posting** - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

EXHIBIT   A

**Informal Conference** - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 4, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

**Employers' Right to Contest** - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

**Penalty Payment** - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**Notification of Corrective Action** - For each violation which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (example: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

**Employer Discrimination Unlawful** - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

**Employer Rights and Responsibilities** - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

**Employees' Right to Contest** - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

**Inspection Activity Data** - you should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at [WWW.OSHA.GOV](http://WWW.OSHA.GOV). If you have any dispute with the accuracy of the information displayed, please contact this office.





## NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 07/23/2004. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, Honolulu, HI 96813 on \_\_\_\_\_ at \_\_\_\_\_. Employees and/or representatives of employees have a right to attend an informal conference.

# STATE OF HAWAII

Department of Labor and Industrial Relations  
Hawaii Occupational Safety and Health Division

Inspection Number: 307255224  
Inspection Dates: 03/02/2004 -



830 Punchbowl Street, Room 425  
Honolulu, HI 96813

Issuance Date: 07/23/2004

## Citation and Notification of Penalty

Company Name: Isemoto Contracting Co Ltd  
Inspection Site: 69-289 Waikoloa Beach Dr, Kamuela, HI 96743

### Citation 1 Item 1 Type of Violation: **Serious**

29 CFR 1926.21(b)(2) [Refer to chapter 12-111.1, HAR] was violated because:

The employer did not instruct employees in the dangers associated with working near heavy equipment and to notify operators of their presence while working in the vicinity of heavy equipment. Employees were exposed to struck-by hazards from heavy equipment.

29 CFR 1926.21(b)(2) states "The employer shall instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environment to control or eliminate any hazards or other exposure to illness or injury."

Location: Jobsite

### Abatement Documentation Required

Date By Which Violation Must be Abated:  
Penalty:

08/10/2004  
\$4,000.00

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

# STATE OF HAWAII

Department of Labor and Industrial Relations  
Hawaii Occupational Safety and Health Division

Inspection Number: 307255224

Inspection Dates: 03/02/2004 -



830 Punchbowl Street, Room 425  
Honolulu, HI 96813

Issuance Date: 07/23/2004

## Citation and Notification of Penalty

Company Name: Isemoto Contracting Co Ltd  
Inspection Site: 69-289 Waikoloa Beach Dr, Kamuela, HI 96743

Citation 1 Item 2 Type of Violation: **Serious**

29 CFR 1926.95(a) [Refer to chapter 12-114.2, HAR] was violated because:

Employees who worked in areas and under circumstances where they were exposed to moving heavy equipment were not required by the company to wear highly visible materials.

29 CFR 1926.95(a) states "Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact."

Location: Jobsite

## Abatement Documentation Required

Date By Which Violation Must be Abated:  
Penalty:

08/10/2004  
\$4,000.00

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

**STATE OF HAWAII**

Department of Labor and Industrial Relations  
Hawaii Occupational Safety and Health Division

Inspection Number: 307255224  
Inspection Dates: 03/02/2004 -



830 Punchbowl Street, Room 425  
Honolulu, HI 96813

Issuance Date: 07/23/2004

**Citation and Notification of Penalty**

Company Name: Isemoto Contracting Co Ltd  
Inspection Site: 69-289 Waikoloa Beach Dr, Kamuela, HI 96743

**Citation 1 Item 3 Type of Violation: Serious**

29 CFR 1926.602(a)(9)(ii) [Refer to chapter 12-129.1, HAR] was violated because:

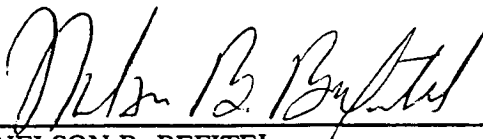
The reverse signal alarm on a Caterpillar grader #5227 that backed over an employee was not operational and no employee was assigned to observe clearance during reversing.

29 CFR 1926.602(a)(9)(ii) states "No employer shall permit earthmoving or compacting equipment which has an obstructed view to the rear to be used in reverse gear unless the equipment has in operation a reverse signal alarm distinguishable from the surrounding noise level or an employee signals that it is safe to do so."

Location: Jobsite

**Abatement Documentation Required**

Date By Which Violation Must be Abated: 07/27/2004  
Penalty: \$4,000.00

  
NELSON B. BEFITEL  
DIRECTOR

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

830 PUNCHBOWL STREET, ROOM 425

Honolulu, HI 96813



SUMMARY OF PENALTIES

Company Name: Isemoto Contracting Co Ltd  
Inspection Site: 69-289 Waikoloa Beach Dr  
Kamuela, HI 96743  
Issuance Date: 07/23/2004

Summary of Penalties for Inspection Number 307255224

Citation 01, Serious = \$12,000.00

TOTAL PENALTIES = \$12,000.00

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.

ORDER: COMPLETE THIS SECTION

Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, on the front if space permits.

Title Addressed to: 307255224

Leslie Isemoto, President  
Isemoto Contracting Co., Ltd.  
Box 4669  
Kamuela, Hawaii 96720

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]* ☒ Agent  
☐ Addressee

B. Received by (Printed Name)

*Launz O'Connor*

C. Date of Delivery

*7/26/04*

D. Is delivery address different from Item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

Order Number  
(Transfer from service label)

7003 3110 0003 5610 3007

Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540

## ABATEMENT CERTIFICATION

State of Hawaii  
Department of Labor and Industrial Relations  
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION  
830 PUNCHBOWL STREET, ROOM 425  
HONOLULU, HI 96813

Isemoto Contracting Co Ltd  
P O Box 4669  
Hilo, HI 96720

The hazard referenced in Inspection Number 307255224 for the violation identified as Citation 01 and item 001 was corrected on \_\_\_\_\_.  
How corrected \_\_\_\_\_.

The hazard referenced in Inspection Number 307255224 for the violation identified as Citation 01 and item 002 was corrected on \_\_\_\_\_.  
How corrected \_\_\_\_\_.

The hazard referenced in Inspection Number 307255224 for the violation identified as Citation 01 and item 003 was corrected on \_\_\_\_\_.  
How corrected \_\_\_\_\_.

I attest that the Information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement activities described in this certification.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name